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WELSH STATUTORY INSTRUMENTS

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**2020 No. 1318 (W. 290)**

**TOWN AND COUNTRY PLANNING, WALES**

**The Town and Country Planning (General Permitted Development) (Amendment) (No. 3) (Wales) Order 2020**

<i>Made</i>	- - - -	<i>19 November 2020</i>
<i>Laid before Senedd Cymru</i>		<i>20 November 2020</i>
<i>Coming into force</i>	- -	<i>21 December 2020</i>

The Welsh Ministers make the following Order in exercise of the powers conferred by sections 59, 60(1) and (3), 61(1) and 333(4B) and (7) of the Town and Country Planning Act 1990<sup>(1)</sup> and now vested in them<sup>(2)</sup> and, in relation to article 4(8), by paragraph 1A of Schedule 2 to the European Communities Act 1972<sup>(3)</sup>.

This Order make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for the references in this Order to Commission Implementing Regulation (EU) 2020/1070<sup>(4)</sup> on specifying the characteristics of small-area wireless access points pursuant to Article 57 paragraph 2 of EU Directive 2018/1972 of the European Parliament and Council establishing the European Electronic Communications Code<sup>(5)</sup>, to be construed as references to that instrument as amended from time to time.

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- (1) 1990 c. 8. Section 59(4) was inserted by section 55 of, and paragraph 5 of Schedule 7 to, the Planning (Wales) Act 2015 (anaw 4) (“the 2015 Act”). Section 333(4B) was substituted by section 55, of and paragraph 6(3) of Schedule 7 to, the 2015 Act. There are other amendments which are not relevant to this instrument.
- (2) The functions of the Secretary of State under sections 59, 60(1), 61(1) and (3) and 333(7) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672): see the entry in Schedule 1 for the Town and Country Planning Act 1990 as substituted by article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253). By virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 (c. 32) the functions of the National Assembly for Wales were transferred to the Welsh Ministers.
- (3) The European Communities Act 1972 (“the 1972 Act”) was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) with effect from exit day. “Exit day” is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the 1972 Act continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”). “IP completion day” is defined in section 1A as 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act). Paragraph 1A of Schedule 2 to the 1972 Act was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51) and amended by section 3(3) of, and Part 1 of the Schedule, to the European Union (Amendment) Act 2008 (c. 7) and S.I. 2007/1388.
- (4) OJ No L 234, 21.7.2020, p. 11.
- (5) OJ No L 321, 17.12.2018, p. 36.

### **Title, commencement and application**

1.—(1) The title of this Order is the Town and Country Planning (General Permitted Development) (Amendment) (No. 3) (Wales) Order 2020 and it comes into force on 21 December 2020.

(2) This Order applies in relation to Wales.

### **Amendment of the Town and Country Planning (General Permitted Development) Order 1995**

2. The Town and Country Planning (General Permitted Development) Order 1995(6) is amended as set out in articles 3 to 5.

### **Community growing spaces**

3. After Part 6 of Schedule 2 (agricultural buildings and operations) insert—

## **“PART 6A**

### **Community Growing Spaces**

#### **Class A**

#### **A. Permitted development**

**Development consisting of the erection, extension, alteration or replacement of storage sheds and greenhouses on community growing spaces.**

#### **A.1 Development not permitted**

Development is not permitted by Class A if—

- (a) the development would be carried out on a community growing space of less than 62 square metres in area;
- (b) on a community growing space of less than 125 square metres in area, it would result in the presence of more than either—
  - (i) one storage shed; or
  - (ii) one greenhouse;
- (c) on a community growing space of 125 square metres or more in area, it would result in the presence of more than one storage shed and one greenhouse;
- (d) the ground area of the storage shed or greenhouse would exceed 6 square metres when measured externally;
- (e) any part of the storage shed or greenhouse would exceed 2.2 metres in height;
- (f) the development would be on article 1(5) land;
- (g) the development would be on land within a World Heritage Site;
- (h) the development would be within the curtilage of a listed building; or
- (i) the development would be within—

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(6) S.I. 1995/418. Article 4 was amended by S.I. 1996/528, S.I. 2006/124 (W. 17), S.I. 2006/1386 (W. 136) and S.I. 2013/1776 (W. 177). Part 24 was substituted by S.I. 2019/330 (W. 80). There are other amending instruments but none are relevant.

- (i) 8 metres of a non-tidal main river (or within 8 metres of any flood defence structure or culvert on that river); or
- (ii) within 16 metres of a tidal main river (or within 16 metres of any flood defence structure or culvert on that river).

## **A.2 Interpretation of Class A**

For the purposes of Class A—

“community growing space” means—

- (a) an allotment including an allotment garden within the meaning of the Allotments Act 1922(7); or
- (b) any other land used or intended for use—
  - (i) by one or more communities,
  - (ii) wholly or mainly for the cultivation of vegetables, fruit, herbs or flowers, and
  - (iii) otherwise than with a view to making a profit;

“culvert” means a covered channel or pipe which prevents the obstruction of a main river or drainage path by an artificial construction;

“flood defence structure” means any permanent works constructed, operated or maintained by the Natural Resources Body for Wales, for the purposes of managing flood risk;

“greenhouse” means a structure such as a glasshouse or polytunnel in which vegetables, fruit, herbs or flowers are cultivated under cover in an enclosed space, but does not include a structure in which livestock are kept;

“main river” has the meaning given in section 113(1) of the Water Resources Act 1991(8);

“non-tidal main river” means any part of a main river that is not a tidal main river;

“normal tidal limit” means the normal tidal limit as marked on the Ordnance Maps (1:25,000 scale);

“tidal main river” means that part of a main river downstream of the normal tidal limit.”

## **Development by electronic communications code operators**

4.—(1) In article 4(3)—

(a) after sub-paragraph (aa) insert—

“(aaa) development permitted by Part 24 which consists of the installation, alteration or replacement of a Regulation 2020/1070 small cell system;”;

(b) in sub-paragraph (c), after “provides” insert “but this is subject to paragraph (3A)”.

(2) After article 4(3) insert—

“(3A) A direction under paragraph (1) or (2) may not affect the carrying out of development consisting of the installation, alteration or replacement of a Regulation 2020/1070 small cell system.”

(3) In article 4(6), at the appropriate place insert—

““Regulation 2020/1070 small cell system” has the same meaning as in Part 24 of Schedule 2;”.

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(7) 1922 c. 51.

(8) 1991 c. 57. The definition of “main river” in section 113(1) was amended by section 59(1) and (3) of the Water Act 2014 (c. 21). There are other amendments to section 113(1) but none are relevant to this Order.

- (4) Part 24 of Schedule 2 is amended as set out in paragraphs (5) to (8).
- (5) In paragraph A.1—
- (a) in sub-paragraph (h), for “paragraphs” substitute “sub-paragraphs” and for “paragraph” substitute “sub-paragraph”;
- (b) in sub-paragraph (j)—
- “(i) in paragraph (i), for “small cell antennas” substitute “Regulation 2020/1070 small cell systems or small cell systems”;
- (ii) for paragraph (iii) substitute—
- “(iii) in the case of antennas other than dish antennas, Regulation 2020/1070 small cell systems or small cell systems, the development would result in the presence on the building or structure of—
- (aa) more than four antenna systems; or
- (bb) any antenna system operated by more than four electronic communications code operators; or”;
- (c) for sub-paragraph (k)(ii) substitute—
- “(ii) in the case of antennas other than dish antennas, Regulation 2020/1070 small cell systems or small cell systems, the development would result in the presence on the building or structure of—
- (aa) more than five antenna systems; or
- (bb) any antenna system operated by more than four electronic communications code operators; or”;
- (d) for sub-paragraph (l) substitute—
- “(l) in the case of development on any protected land it would consist of—
- (i) the installation or alteration of an antenna other than a Regulation 2020/1070 small cell system or a small cell system, or of any apparatus which includes or is intended for the support of such an antenna; or
- (ii) the replacement of an antenna or such apparatus by an antenna other than a Regulation 2020/1070 small cell system or a small cell system, or apparatus which differs from that which is being replaced,
- unless the development is carried out in an emergency or is development described in the introductory words to sub-paragraph (m) and which is allowed by the paragraphs which follow those introductory words;”;
- (e) in sub-paragraph (m)(ii), after “dish antennas” insert “Regulation 2020/1070 small cell systems or small cell systems;”;
- (f) for sub-paragraphs (q) to (t) substitute—
- “(q) in the case of the installation, alteration or replacement on a dwellinghouse or within the curtilage of a dwellinghouse of any electronic communications apparatus, that apparatus—
- (i) is not a Regulation 2020/1070 small cell system or a small cell system;
- (ii) being a Regulation 2020/1070 small cell system or a small cell system, is or would be on any protected land or within a World Heritage Site, unless the development is carried out in an emergency or is development which is allowed by sub-paragraph (r);

- (iii) being a small cell system, would result in the presence on that dwellinghouse or within the curtilage of that dwellinghouse of more than two small cell systems; or
  - (iv) being a small cell system, is to be located on a roof or on a chimney so that the highest part of the antenna would exceed in height the highest part of that roof or chimney respectively;
- (r) in the case of the installation, alteration or replacement on protected land or within a World Heritage Site of a Regulation 2020/1070 small cell system or a small cell system on a dwellinghouse or within the curtilage of a dwellinghouse, the antenna—
- (i) is to be located—
    - (aa) on a chimney;
    - (bb) on a building which exceeds 15 metres in height;
    - (cc) on a wall or roof slope which fronts a highway; or
    - (dd) on a roof, other than a roof slope which fronts a highway, so that the highest part of the antenna would exceed in height the highest part of that roof;
  - (ii) is or would be on protected land (other than a conservation area<sup>(9)</sup>) and would result in the presence on that dwellinghouse or within the curtilage of that dwellinghouse of more than either—
    - (aa) two Regulation 2020/1070 small cell systems;
    - (bb) two small cell systems; or
    - (cc) one Regulation 2020/1070 small cell system and one small cell system; or
  - (iii) is or would be in a conservation area or within a World Heritage site and would result in the presence on that dwellinghouse or within the curtilage of that dwellinghouse of more than one Regulation 2020/1070 small cell system or one small cell system;
- (s) in the case of the installation, alteration or replacement of a Regulation 2020/1070 small cell system or a small cell system on a building or other structure, which is not a dwellinghouse or within the curtilage of a dwellinghouse, in a conservation area or World Heritage Site—
- (i) unless the development is carried out in an emergency;
  - (ii) the installation of a Regulation 2020/1070 small cell system or a small cell system would result in the presence on the building or other structure of more than either—
    - (aa) two Regulation 2020/1070 small cell systems;
    - (bb) two small cell systems; or
    - (cc) one Regulation 2020/1070 small cell system and one small cell system; or
  - (iii) the replacement or alteration of a Regulation 2020/1070 small cell system or a small cell system would result in the presence on the building or other structure of more than either—
    - (aa) two Regulation 2020/1070 small cell systems;

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<sup>(9)</sup> See section 336(1) of the Town and Country Planning Act 1990 for the definition of “conservation area”.

- (bb) two small cell systems;
  - (cc) one Regulation 2020/1070 small cell system and one small cell system; or
  - (dd) if greater, the number of Regulation 2020 small cell systems or small cell systems on the building or other structure before alteration or replacement of the antenna.”
- (6) In paragraph A.3(4)(c)—
- (a) for “small cell antennas” substitute “Regulation 2020/1070 small cell systems or small cell systems”, and
  - (b) omit the words from “as expressed in” to the end.
- (7) In paragraph A.4(1)—
- (a) omit the definitions of “small antenna” and “small cell antenna”;
  - (b) at the appropriate place insert—
    - ““Commission Regulation 2020/1070” means Commission Implementing Regulation (EU) 2020/1070 on specifying the characteristics of small-area wireless access points pursuant to Article 57 paragraph 2 of the Directive;”;
    - ““the Directive” means Directive (EU) 2018/1972 of the European Parliament and Council establishing the European Electronic Communications Code (recast);”;
    - ““Regulation 2020/1070 small cell system” means a small cell system—
- (a) to which Commission Regulation 2020/1070 applies;
  - (b) which complies with the requirements of the European Standard laid down at point B of the Annex to Commission Regulation 2020/1070; and
  - (c) meets the conditions set out in Point A of the Annex to Commission Regulation 2020/1070;”;
- ““small cell system” means an antenna which may be referred to as a femtocell, picocell, metrocell or microcell antenna, together with any ancillary apparatus, which—
- (a) operates on a point to multi point or area basis in connection with an electronic communications service;
  - (b) does not, in any two dimensional measurement, have a surface area exceeding 5000 square centimetres; and
  - (c) does not have a volume exceeding 50,000 cubic centimetres;
- but does not include a Regulation 2020/1070 small cell system and any calculation for the purposes of paragraph (b) or (c) includes any power supply unit or casing, but excludes any mounting, fixing, bracket or other support structure;”.
- (8) After paragraph A.4(2) insert—
- “(3) Any reference in this Order to Commission Regulation 2020/1070 is a reference to that Regulation as amended from time to time.”

**Amendments to Part 1 (development within the curtilage of a dwellinghouse) and Part 25 (other telecommunications development) of Schedule 2**

- 5.—(1) In Part 1 of Schedule 2, in paragraph H.4 —
- (a) for “small antenna” substitute “small cell system”;

- (b) at the end insert “, but excludes Regulation 2020/1070 small cell systems to the extent that they are permitted by paragraph A.1(q) of Part 24”.
- (2) In Part 25 of Schedule 2—
  - (a) in paragraph A.3(b)—
    - (i) for “small antenna” substitute “small cell system”;
    - (ii) at the end insert “, but excludes Regulation 2010/1070 small cell systems to the extent that they are permitted by paragraph A.1(q) of Part 24”;
  - (b) in paragraph B.5—
    - (i) for “small antenna” substitute “small cell system”;
    - (ii) at the end insert “, but excludes Regulation 2010/1070 small cell systems to the extent that they are permitted by paragraph A.1(q) of Part 24”.

19 November 2020

*Julie James*  
Minister for Housing and Local Government,  
one of the Welsh Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Town and Country Planning (General Permitted Development) Order 1995 (“the GPDO”).

Article 3 of, and Schedule 2 to, the GPDO confer permitted development rights in respect of certain development. Where such rights are conferred, an application for planning permission is not required.

Article 3 of this Order amends Schedule 2 to the GPDO by inserting a new Part 6A (community growing spaces) to permit the erection, extension, alteration or replacement of storage sheds and greenhouses on community growing spaces of at least 62 square metres. The permitted development is subject to limitations which are also set out in the new Part 6A.

Article 4(1), (2), (3), (5)(b) to (f), (7) and (8) of this Order implement Article 57(1) of Directive (EU) 2018/1972 of the European Parliament and Council establishing the European Electronic Communications Code (recast) (OJ No L 321, 17.12.2018, p. 36) by amending article 4 of, and Part 24 (electronic communications code operators) of Schedule 2 to, the GPDO.

The amendments to Part 24 of Schedule 2 to the GPDO—

- (a) reduce the limitations on development consisting of the installation, alteration or replacement of all small cell systems, and
- (b) remove limitations on development consisting of the installation, alteration or replacement of Regulation 2020/1070 small cell systems outside protected land or World Heritage Sites.

The main changes are to—

- (a) omit the definitions of “small antenna” and “small cell antenna” (article 4(7)(a)),
- (b) insert a new definition of “small cell system” in place of the previous definition of “small cell antenna”(article 4(7)(b)),
- (c) insert a definition of “Regulation 2020/1070 small cell system” which is a small cell system to which Commission Implementing Regulation (EU) 2020/1070 (OJ No L 234, 21.7.2020, p. 11) applies and which meets the conditions and requirements set out in that Regulation (article 4(7)(b)),
- (d) provide that references to Commission Implementing Regulation (EU) 2020/1070 are ambulatory (article 4(8)),
- (e) extend permitted development rights in relation to development consisting of the installation, alteration or replacement of a small cell system or a Regulation 2020/1070 small cell system (article 4(5)(d) to (f)), and
- (f) exclude small cell systems and Regulation 2020/1070 small cell systems from the calculation of the number of antenna systems which may be installed on certain buildings and structures and the number of electronic communications code operators who may operate antenna systems on such buildings and structures (article 4(5)(b) and (c)).

This Order also amends article 4 of the GPDO so that a local planning authority or the Welsh Ministers may not issue a direction restricting the scope of permitted development rights so far as the development consists of the installation, alteration or replacement of a Regulation 2020/1070 small cell system (article 4(1), (2) and (3)).



Article 4(5)(a), (b) and (c) and (6) of this Order, makes the following further changes to Part 24 of Schedule 2—

- (a) minor drafting changes (article 4(5)(a)),
- (b) increases the number of antenna systems which may be installed on certain buildings and structures from three to four (article 4(5)(b) and (c)),
- (c) increases the number of electronic communications code operators who may operate antennas systems on certain buildings and structures from three to four (article 4(5)(b) and (c)), and
- (d) to remove a reference to a EU Council Recommendation and change a reference to small cell antenna (article 4(6)).

Article 5 of this Order amends paragraph H.4 of Part 1 of Schedule 2 to the GPDO and paragraphs A.3(b) and B.5 of Part 25 of Schedule 2 to the GPDO to—

- (a) substitute “small cell systems” for “small antenna”, and
- (b) exclude Regulation 2020/1070 small cell systems permitted by the new paragraph A.1(q) of Part 24 of Schedule 2 to the GPDO from the calculation of the number of antenna permitted by paragraph H.1(a) of Part 1 to Schedule 2 to the GPDO and by paragraphs A.1(d) and B.1(d) of Part 25 of that Schedule.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Welsh Government at Cathays Park, Cardiff, CF10 3NQ.